if it ply wholly within one state its taxable situs is there, no matter where the owner is domiciled.[5] Consequently in regard to a single unit, the artificial situs of domicile controls only in the absence of an actual situs elsewhere.

The taxable situs of a mass of property, such as the rolling stock of a railroad, the specific units of which are constantly moving from state to state, is a question of greater difficulty, which as yet is but partly settled. Property in through transit manifestly cannot acquire a taxable situs,[6] at least so far as the units are concerned. But where a constant average of such units is maintained within the state and enjoys the protection of its laws, it is manifestly unfair that this average should contribute no taxes, even though each particular unit is continually in transit through the state. It was therefore held in Pullman's Co. *v.* Pennsylvania [8] that a foreign corporation might be taxed upon the average number of cars annually within the state, though no particular car obtained a taxable situs therein. This decision was supplemented by Union Transit Co. *v.* Kentucky,[2] which held that a domestic corporation cannot be taxed upon those of its cars permanently beyond the state. And a recent case has decided that a domestic railroad corporation may be taxed upon all its rolling stock, even though specific cars go from time to time beyond the state, on the ground that the state of origin remains the permanent situs, notwithstanding occasional excursions. *New York ex rel. N. Y. C., etc., R. R. Co.* v. *Miller*, 202 U. S. 584. The net result of these decisions is that a railroad cannot be taxed as much as twice upon the whole of its rolling stock, although the question is still undecided whether it may not be taxed twice upon a portion. In other words, although it is clear that the whole rolling stock cannot have a taxable situs in two states at once, it is not settled whether, if a portion obtain a taxable situs in another state, though none of the specific cars do so, such portion ceases to be taxable at the domicile of the corporation. When considered in connection with the Pullman case, the reasoning, though not the decision, in the Union Transit case indicates that this portion would cease to be taxable at the domicile of the corporation, whereas the reasoning in the Miller case indicates that it would not. Certainly the more desirable result is reached by following the former case. It is just that property should be taxed on its full value; it is equally just that no part be taxed twice.[7]

RESPONSIBILITY OF THE DRAWER OF A NEGLIGENTLY DRAWN CHECK. — There is apparently no American case directly deciding where liability shall be placed, when a depositor draws a check in such form as to enable a third person by an insertion to raise the amount successfully, so that a bank using reasonable care honors the check for the altered amount.[1] In similar situations involving other negotiable instruments, there are a number of American decisions, the majority of which hold the careless maker or drawer liable for the altered sum.[2] The ground taken is that, where one of two innocent

[5] Old Dominion S. S. Co. *v.* Virginia, 198 U. S. 299.
[6] Kelley *v.* Rhoads, 188 U. S. 1.
[7] See also 19 HARV. L. REV. 206.

[1] Exch. Bk. of Spokane *v.* Bk. of Little Rock, 58 Fed. Rep. 140, must be distinguished. The draft there was in the hands of a discounter, and the doctrine of *caveat emptor* applied.
[2] Merritt *v.* Boyden, 119 Ill. 136. *Contra*, Knoxville Nat'l Bk. *v.* Clark, 51 Ia. 264.

parties must suffer, if one is faultless and the other guilty of some lack of care which presented the opportunity for the commission of the damaging act, the loss should fall upon the latter.[3] This reasoning applies with equal force to careless drawers of checks. The courts in the minority jurisdictions have objected that a drawer or maker, merely because he is careless, should not be forced into a contract other than he has made,[4] and that, since he owes no duty, he cannot be legally negligent.[5] But these arguments can still less be successfully urged on behalf of careless drawers of checks. In the first place a check is an order to pay, and not a contract, thus resembling a bill of exchange before acceptance. A check may become a contract by certification, but that is not the usual course. Whatever force, therefore, the first objection may have in the case of accepted bills of exchange and of promissory notes, which are contracts, it has no application to uncertified checks. In the second place the depositor does owe a duty to the bank. The contractual obligation of the bank to honor all of its customer's orders to pay, up to the amount of his deposit, certainly carries with it the correlative obligation of the customer not to put obstacles in the way of the bank's performance by his carelessness in drawing these orders. Further, contrary to what has occasionally been suggested, the defrauding of the bank is the proximate result of the depositor's negligence. Undoubtedly the chain of causation is generally broken by the intervention of the criminal act of a third party; but here the act is one that a reasonable man should have anticipated, as is evidenced by the precautions generally taken in drawing checks. In every case the liability of the drawer should depend upon whether or not, as a matter of fact in the particular circumstances, he employed reasonable care.[6] Thereby responsibility is expediently attached to the only person whose care can eliminate the successful commission of this fraud.

In England, in the first case on the subject, the court held the negligent drawer of a check responsible.[7] In the next important case the acceptor of a negligently drawn bill of exchange, raised after acceptance, was held not liable on the bill to a *bona fide* holder for value,[8] and the court, noticing that the earlier case dealt with a check, did not even profess to overrule it. The early decision has been followed by other cases involving checks, and though doubted somewhat in dicta in distinguishable cases, it has stood until the Judicial Committee of the Privy Council recently decided that the careless drawer of a check was to be protected in preference to the bank. *Colonial Bank of Australasia* v. *Marshall*, 22 T. L. R. 746. In so holding, the case is opposed to previously existing English authority, and, it seems, to the better legal view.

RIGHTS OF DEPOSITOR UPON SUB-DEPOSIT MADE BY DEPOSITARY BANK. — The claim of a bank against a second bank in which it has made a deposit of money is ordinarily an asset attainable by any creditor of the first bank; but in at least two instances it is believed that, upon an applica-

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[3] See Capital Bank *v.* Armstrong, 62 Mo. 59, 67.
[4] See Worrall *v.* Gheen, 39 Pa. St. 388.
[5] See Fordyce *v.* Kosminsky, 49 Ark. 40, 45.
[6] Leas *v.* Walls, 101 Pa. St. 57.
[7] Young *v.* Grote, 4 Bing. 253.
[8] Scholfield *v.* Earl of Londesborough, [1896] A. C. 514. See 8 HARV. L. REV. 418.